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TAGS: PREL ECON PGOV RS

SUBJECT: RUSSIA: KHODORKOVSKIY/LEBEDEV CHARGES DETAILED

Classified By: Ambassador William J. Burns, by reason 1.4(b) and (d).

¶1. (C) Summary. Russia's Attorney General has charged Mikhail Khodorkovskiy and Platon Lebedev with two counts of embezzlement and two counts of money-laundering (under Articles 160 and 174 of the Russian Criminal Code), which carry a maximum sentence of 15 and 10 years, respectively. The case is now in the preliminary investigation phase, which could last up to 18 months, and should result in a formal indictment. As the case is currently configured (and it is possible for charges to be added or dropped up to the time of the trial) the two will not be eligible for a jury trial. Speculation is rife as to why the charges are being brought now, but the most prevalent explanation making the rounds in Moscow is that eight years in jail may just not be enough for Khodorkovskiy's detractors. Little detail is available about the allegations, but our preliminary assessment suggests they are less credible than the tax evasion case brought in the first round against Khodorkovskiy. End summary.

¶2. (SBU) The Charges. According to the General Procurator, the charges against Khodorkovskiy and Lebedev are based on their alleged illegal acquisition of state shares in Eastern Oil Company (VNK) and in VNK subsidiaries. The prosecutor alleges that to conceal these illegal actions and launder the illegal proceeds, Khodorkovskiy and Lebedev transferred the VNK shares to a series of offshore companies. The charges also allege that between 1998 and 2003, some 850 billion rubles (some USD32 billion) in oil from YUKOS subsidiaries Samaraneftegaz, Yuganskneftegaz, and Tomskneftegaz were illegally obtained by Khodorkovskiy and Lebedev through transfer pricing schemes. As part of this scheme, the two men are charged with allegedly laundering 450 billion rubles (USD17 billion) between 1998 and 2004.

¶3. (SBU) Indictment Still to Come. The charges detailed this week by the General Prosecutor are contained in a preliminary charging document issued when "there is sufficient evidence establishing grounds to charge a person with commission of a crime," but before the completion of the preliminary investigation. (It is generally not made public, but must be presented to the accused and his counsel.) The next step is usually a final charging document, or "indictment," issued upon the completion of the preliminary investigation.

¶4. (SBU) Preliminary Investigation Underway. Press reports suggest that the preliminary investigation has already begun, and that Khodorkovskiy and Lebedev have both denied guilt and refused to give testimony. Russian law does not stipulate a

minimum time frame for the preliminary investigation, but it should take no longer than 12 months, with a possible extension to 18 months if the case presents "extraordinary circumstances." According to a February 9 statement by the General Prosecutor, the court has granted the prosecution's request that the two men be held in investigative detention in the city of Chita pending completion of the preliminary investigation.

¶6. (SBU) No Jury Trial, No Venue Yet. None of the current charges against Khodorkovskiy and Lebedev are eligible for trial by jury. This means the case as it now exists will be tried either by a single judge or by a panel of three judges.

Under Russian law, a criminal case must be tried in the venue where the crime or crimes were committed. If the case involves crimes committed in more than one place (as in this case), then the case must be heard in the location where the majority of the crimes were committed. The venue has not yet been determined.

¶7. (SBU) Timing Theories. There has been a lot of speculation in the media about the timing of the new charges. Many believe the charges are designed to prevent Khodorkovskiy from winning release on parole in October 2007. Under Russian law, a prisoner is eligible for parole upon completion of half of his sentence. Because Khodorkovskiy was arrested in October 2003 and subsequently sentenced to 8 years incarceration, he could in theory be eligible for parole this October. There is some confusion about whether Khodorkovskiy would actually be eligible for parole, given the apparent number of his infractions while in prison - to which Khodorkovskiy himself admitted. Some suggest that it is not the parole possibility, but the fact that he would be released during the first term of the next President that is driving the process forward now. Still others suggest that the charges were brought to delay review of Khodorkovskiy's appeal of his conviction to the European Court of Human Rights (ECHR), although a well-known Russian human rights lawyer with an active practice before the ECHR tells us that under ECHR rules, the filing of additional charges should not affect the review of an appeal arising from a prior case.

¶8. (C) Comment. We understand that money-laundering investigation has been underway for some time. (A prominent Moscow lawyer told the Embassy that she had been asked by Khodorkovskiy's lawyers in 2005 to join the defense team for what they then termed "the second case" which would involve money laundering charges.) Yet, how these charges actually fit together is still a puzzle. Yukos began acquiring VNK in 1997, gaining controlling ownership in 2000, and outright ownership by April 2002 -- each time through a combination of privatization auctions and purchases on the secondary market. VNK was the parent company of Tomskneftegaz, but had no corporate relationship to either of the two other production facilities named in the preliminary indictment. Likewise, the USD17 billion in alleged money laundering is hard to reconcile with what we know about the firm's finances for the years in question. Between 1998 and 2003, Tomskneftegaz produced roughly USD10 billion in oil, and only part of that went to Yukos, as the firm did not own the facility outright until 2002. How the other major production facilities, Yuganskneftegaz and Tomskneftegaz (which Khodorkovskiy obtained in 1995 through the loans-for-shares scandal) get wrapped up in the VNK affair is also beyond our current understanding.

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